

ASSEMBLY BILL

No. 1793

Introduced by Assembly Member Holden

February 4, 2016

An act to amend Section 7031 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

AB 1793, as introduced, Holden. Contractors: license requirements: recovery actions.

Existing law, the Contractors' State License Law, creates the Contractors' State License Board within the Department of Consumer Affairs and provides for the licensure and regulation of contractors. Existing law authorizes a person who utilizes an unlicensed contractor to bring an action in any court of competent jurisdiction in this state for recovery of compensation paid to the unlicensed contractor for performance of any act or contract. Existing law authorizes a court to determine that a contractor has substantially complied with licensure requirements if specified conditions are met. Existing law also requires a contractor to demonstrate that he or she acted promptly and in good faith to reinstate his or her license upon learning it was invalid in order to meet substantial compliance of these licensure requirements.

This bill would instead require a court to find that a contractor is in substantial compliance with the licensure requirements if prescribed evidentiary standards are met.

The bill would declare that its provisions are declaratory of existing law.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 7031 of the Business and Professions Code is amended to read:

7031. (a) Except as provided in subdivision (e), no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person, except that this prohibition shall not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029.

(b) Except as provided in subdivision (e), a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

(c) A security interest taken to secure any payment for the performance of any act or contract for which a license is required by this chapter is unenforceable if the person performing the act or contract was not a duly licensed contractor at all times during the performance of the act or contract.

(d) If licensure or proper licensure is controverted, then proof of licensure pursuant to this section shall be made by production of a verified certificate of licensure from the Contractors' State License Board which establishes that the individual or entity bringing the action was duly licensed in the proper classification of contractors at all times during the performance of any act or contract covered by the action. Nothing in this subdivision shall require any person or entity controverting licensure or proper licensure to produce a verified certificate. When licensure or proper licensure is controverted, the burden of proof to establish licensure or proper licensure shall be on the licensee.

(e) The judicial doctrine of substantial compliance shall not apply under this section where the person who engaged in the business or acted in the capacity of a contractor has never been a duly licensed contractor in this state. However, notwithstanding

1 subdivision (b) of Section 143, the court ~~may~~ *shall* determine that
2 there has been substantial compliance with licensure requirements
3 under this section if it is shown at an evidentiary hearing that the
4 person who engaged in the business or acted in the capacity of a
5 contractor (1) had been duly licensed as a contractor in this state
6 prior to the performance of the act or contract, (2) acted reasonably
7 and in good faith to maintain proper licensure, ~~(3) did not know~~
8 ~~or reasonably should not have known that he or she was not duly~~
9 ~~licensed when performance of the act or contract commenced, and~~
10 ~~(4) and (3) acted promptly and in good faith to reinstate his or her~~
11 ~~license upon learning it was invalid. remedy the failure to comply~~
12 ~~with the licensure requirements under this section upon learning~~
13 ~~of the failure.~~

14 (f) The exceptions to the prohibition against the application of
15 the judicial doctrine of substantial compliance found in subdivision
16 (e) shall apply to all contracts entered into on or after January 1,
17 1992, and to all actions or arbitrations arising therefrom, except
18 that the amendments to subdivisions (e) and (f) enacted during the
19 1994 portion of the 1993–94 Regular Session of the Legislature
20 shall not apply to either of the following:

21 (1) Any legal action or arbitration commenced prior to January
22 1, 1995, regardless of the date on which the parties entered into
23 the contract.

24 (2) Any legal action or arbitration commenced on or after
25 January 1, 1995, if the legal action or arbitration was commenced
26 prior to January 1, 1995, and was subsequently dismissed.

27 SEC. 2. The amendment of Section 7031 of the Business and
28 Professions Code made by this act does not constitute a change
29 in, but is declaratory of, existing law.
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